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Ex Parte Notice

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325-Lobby
Washington, D.C. 20554

Dear Ms. Dortch:

Re: Cox Petition for Declaratory Ruling on Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloops, WC Docket No. 01-338

On behalf of AT&T, Christopher Heimann, Frank Simone and the undersigned met separately with John Hunter, Legal Advisor to Commissioner McDowell, and Nick Alexander, Legal Advisor to Commissioner Tate on May 24, 2007 regarding the above-listed proceeding. AT&T's representatives reiterated AT&T's position that Cox's Petition for Declaratory Ruling is unnecessary. Specifically, we explained that direct access to ILEC terminals in multi-tenant environments (MTEs) is unwarranted because Cox has multiple options for accessing AT&T's inside wire subloops and increasingly has relied on its own intra-MTE facilities to serve MTEs – and thus has no need for direct access to AT&T's facilities. We further explained that the Oklahoma Corporation Commission (OCC), based on overwhelming evidence that Cox's practice of helping itself to AT&T's inside wire subloops had caused significant damage to AT&T's facilities, reasonably concluded that direct access to AT&T's facilities posed a threat to network integrity and reliability, and therefore should not be permitted in Oklahoma – just as the Commission anticipated when it left it to state Commissions to let decide where and how parties could access such facilities if parties could not reach agreement.

We urged the Commission, if it nevertheless decides that CLECs should be permitted direct access to intra-MTE subloops, to make clear that Cox's practice of helping itself to AT&T's facilities without notice or agreement between the parties is unacceptable and that states may adopt reasonable safeguards to prevent CLECs from damaging an ILEC's facilities and to indemnify the ILEC if they do. We observed that Cox had directly accessed AT&T's facilities without having any agreement in place authorizing such access, ordering such facilities, or providing notice of any kind that it had appropriated AT&T's facilities to its own use. As a consequence, AT&T's property records were rendered inaccurate (causing delays in provisioning and repair of AT&T's facilities), and AT&T was unable to bill Cox and obtain compensation for Cox's use of AT&T's facilities. We explained that, worse yet, Cox technicians employed grossly substandard engineering practices, causing significant damage to AT&T's facilities – including leaving AT&T's terminals at MTEs unsealed and open to the elements, leaving loose bare wires

within those terminals, cutting AT&T's wires, and prying terminal boxes from walls.¹ We noted that, as documented in the record in this proceeding, between 2000 and mid-2004, Cox damaged more than 7,000 of AT&T's terminal blocks, caused more than 3,000 instances of trouble on AT&T's network and more than 9,000 hours of service outages for AT&T's customers, and forced AT&T to incur hundreds of thousands of dollars in expenses to repair this damage (AT&T owns the facilities at issue and thus is responsible for maintaining and restoring them if they are damaged – no matter who caused such damage).² We concluded that it was inconceivable that the Commission would condone Cox's actions, and that, in the face of clear evidence of the damage caused by Cox technicians, it behooved the Commission to clearly address the issue of safeguards if it is going to allow direct access to ILEC intra-MTE subloops.

Specifically, we urged the Commission to make clear that states can and should exercise their authority to adopt appropriate safeguards to address legitimate network integrity, reliability and security concerns, as well as to ensure that ILECs receive appropriate compensation for the use of their facilities (as well as for restoring such facilities for any CLEC damage) in the event a CLEC demands direct access to the ILECs' facilities. We requested that the Commission clarify that, among other things, such safeguards must include a requirement that a CLEC have an approved interconnection agreement authorizing direct access to such facilities that addresses ordering of and compensation for such facilities to ensure that ILECs receive notice when a CLEC intends to access its facilities (both to ensure that the ILECs' property records are accurate and to bill for such access) and obtain compensation/indemnification for the use of and any CLEC damage to those facilities. Such safeguards also could include requirements that a requesting carrier is responsible for ensuring that its technicians complete training in the engineering standards and practices used by the owning carrier, and that its technicians abide by such standards and practices and that reasonable bonding of a requesting carrier's technicians may also be required. We also asked that the Commission make clear that state commissions may adopt additional, reasonable safeguards based on conditions in their states. Naturally any direct access requirements for intra-MTE subloops should apply equally to both CLEC and ILEC facilities.

The attached materials were distributed during the meeting.

We are submitting this Memorandum to the Secretary in accordance with Section 1.1206 of the Commission's rules. Please include a copy of this submission in the record of the above-listed proceeding. Please contact me at (202) 457-3031 if you have any questions.

Sincerely,



cc: J. Hunter (w/o attachments)
N. Alexander (w/o attachments)

Attachments

¹ We provided photographs providing examples of the type of damage caused by Cox's practices. These photographs and other documentation of such damage were previously included in the record of this proceeding.

² We further noted that, in denying Cox direct access to AT&T's intra-MTE subloop facilities, the OCC found – after three days of testimony and reviewing thousands of pages of pre-filed testimony and exhibits – that AT&T had substantiated its claims regarding the damage to its network caused by Cox technicians, and that the Commission therefore should reject Cox's claim that it has not damaged AT&T's network and should be trusted to have completely unfettered access to AT&T's and other ILECs' facilities.